

KIRBY McINERNEY LLP

825 Third Avenue
New York, NY 10022
212.371.6600
Fax. 212.751.2540
WWW.KMLLP.COM
Of counsel
Roger W. Kirby
Alice McInerney

January 19, 2016

VIA ECF & HAND DELIVERY

Honorable Naomi Reice Buchwald
United States District Judge
500 Pearl Street
New York, NY 10007-1312

Re: *In re LIBOR-Based Financial Instruments Antitrust Litig.*,
No. 11 Civ. 2613 (NRB), Master File No. 1:11-md-2262-NRB

Dear Judge Buchwald:

We write on behalf of the Exchange-Based Plaintiffs (“Plaintiffs”) in the above-referenced matter in response to Your Honor’s letter dated January 11, 2016, requesting a compilation of new allegations against each new and existing Defendant and a revised redline of Plaintiffs’ proposed Third Amended Complaint (“PTAC”).¹ Attached hereto are courtesy copies of Plaintiffs’ chart of new allegations organized by Defendant, and a redline of allegations included for purposes of appeal, which Plaintiffs depict in blue text in accordance with Your Honor’s directives.

When Plaintiffs moved for leave to file the PTAC on June 29, 2015, the Court had not ruled on pending motions by certain Defendants challenging the Court’s personal jurisdiction over them in the Exchange-Based Action. Subsequent to the Court’s decisions in *LIBOR IV* and *V*,² Plaintiffs have been meeting and conferring with Defendants to create a spreadsheet containing a list of any claims dismissed on jurisdictional grounds. *See LIBOR V*, 2015 WL 6696407, at *8, Slip Op. at 24. Plaintiffs also have responded to letters filed by certain new and existing Defendants that further challenge jurisdiction and other allegations in the PTAC. [ECF Nos. 1286, 1287]. In addition, Plaintiffs have requested jurisdictional discovery regarding where the Defendants’ suit-related conduct actually occurred. *Id.* 1286 at 2; *see also* ECF No. 1111. In short, certain issues relating to personal jurisdiction are not yet resolved so as to be incorporated into this submission.

While the parties’ negotiations (and perhaps, if necessary, discovery) on jurisdictional issues are ongoing, Plaintiffs respectfully request that the Court allow them to file the PTAC. Notably, Courts in this District have allowed amendment *prior* to making personal jurisdiction determinations. *See Laydon v. Mitsuho Bank, Ltd.*, No. 12 Civ. 3419 (GBD), 2015 WL 1515487 (S.D.N.Y. Mar. 31, 2015) (allowing amendment of complaint to add Tullett Prebon PLC, ICAP Europe Ltd. and Lloyds Banking Group PLC as defendants in Yen LIBOR class action); *Danaher*

¹ *See* ECF Nos. 1159, 1159-1, 2. “¶” or “¶¶” are references to the TAC.

² *See In re LIBOR-Based Fin. Instruments Antitrust Litig.* (“*LIBOR IV*”), No. 11 MDL 2262, 2015 WL 6243526 (S.D.N.Y. Oct. 20, 2015); *LIBOR V*, No. 11 MDL 2262, 2015 WL 6696407 (S.D.N.Y. Nov. 3, 2015).

Kirby McInerney LLP

Honorable Naomi Reice Buchwald

Page 2

Corp. v. Travelers Indem. Co., No. 10 Civ. 0121 (JPO) (JCF), 2013 WL 150027, at *6 (S.D.N.Y. Jan. 10, 2013); *Cantone & Co. v. Seafrigo*, No. 07 Civ. 6602 (PKL), 2010 WL 1488014, at *4 (S.D.N.Y. Apr. 12, 2010) (permitting amendment and deferring factual determinations regarding personal jurisdiction); *JPMorgan Chase Bank, N.A. v. IDW Grp., LLC*, No. 08 Civ. 9116 (PGG), 2009 WL 1357946 at *5 (S.D.N.Y. May 12, 2009) (“[W]ith respect to [defendant's] concerns about personal jurisdiction [over proposed defendant], this Court need not resolve this issue pre-amendment”). Granting Plaintiffs leave to file the PTAC is particularly appropriate here where evidence from governmental and regulatory investigations and settlements with Barclays and five other U.S. Dollar LIBOR Panel banks have demonstrated culpable conduct by most, if not all, Defendants named in the PTAC.

For all of these reasons, and the reasons set forth in Plaintiffs’ request for leave to amend and previous opposition to Defendants’ challenges to personal jurisdiction and the merits of Plaintiffs’ CEA claims, the Court should grant Plaintiffs leave to file their proposed Third Amended Complaint.

Respectfully submitted,

/s/ Christopher Lovell
Christopher Lovell
LOVELL STEWART HALEBIAN
JACOBSON LLP
61 Broadway, Suite 501
New York, New York 10006
Telephone: (212) 608-1900
Email: clovell@lshllp.com

/s/ David E. Kovel
David E. Kovel
KIRBY McINERNEY LLP
825 Third Avenue, 16th floor
New York, New York 10022
Telephone: (212) 371-6600
Email: dkovel@kmlp.com

Interim Co-Lead Counsel for Exchange-Based Plaintiffs and the Proposed Class

cc: All Counsel of Record (by Electronic Filing)